

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JONATHAN X. FLAGG and JACQUELINE ALVAREZ,
on behalf of themselves and on :
behalf of all others similarly situated,

Plaintiffs,

07 Civ. 7392(PKC)

- against -

ORDERSKADDEN, ARPS, SLATE, MEAGHER
& FLOM PENSION PLAN,

Defendant.

P. KEVIN CASTEL, District Judge:

Defendant has moved to dismiss this action under Rule 12(b)(6), Fed. R. Civ. P., on the grounds of the statute of limitations. The plaintiff, the non-movant, has come forward in opposition to the motion to dismiss with Exhibit 3 to the Gottesdiener declaration which purports to be a copy of the letter, dated May 1, 1998, which Ms. Alvarez received from the Plan.

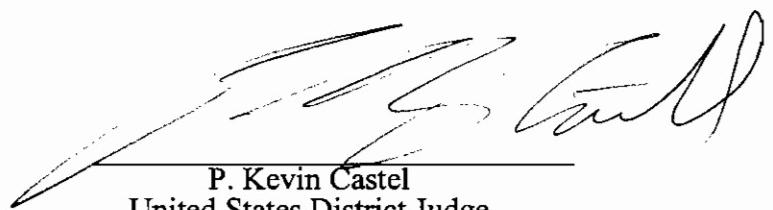
Rule 12(c) provides that

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

The matter has been presented and it is the present intent of the Court not to exclude it from consideration on the motion. Either side may respond with any evidence which Rule 56 permits by May 28, 2008. Any reply is due June 6, 2008.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>5/16/08</u>

SO ORDERED.

A handwritten signature in black ink, appearing to read "P. Kevin Castel".

P. Kevin Castel
United States District Judge

Dated: New York, New York
May 15, 2008